



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable Drew S. Davis  
County Attorney  
San Augustine County  
San Augustine, Texas

Dear Sir:

Opinion No. O-6445

Re: The provisions of V.A.P.C.,  
Article 1700-a-1 apply to  
sweet potatoes infected with  
weevils.

Your recent letter requests this department's opinion as to whether or not Vernon's Annotated Penal Code, Article 1700-a-1, which deals with the control and quarantine of insect and plant disease applies to sweet potatoes.

Vernon's Annotated Penal Code, Article 1700-a-1 is Section 9 of Chapter 15 of the Acts of the 41st Legislature, Second Called Session, 1929; and the civil portion of this Act is found in Vernon's Annotated Civil Statutes, Article 135a-1. This Act was passed to provide "for quarantine regulations and infection of plants, fruits and shrubs to prevent the importation or dissemination of dangerous insect pests and plant diseases in this State" (Sec. 13 of the original Act).

Section 9 (V.A.P.C., Article 1700-a-1) was amended by Acts, 1941, 47th Legislature, Chapter 384, and as amended is as follows:

"When rules and regulations, promulgated by the Commissioner of Agriculture pursuant to any quarantine order authorized in this Act, shall provide for the prevention of the selling, moving, transporting of any plants, plant products, things, or substances from any area quarantined or declared infested as provided for herein, or shall provide for the destruction of trees or fruits, or for the cleaning of orchards or treatment of orchards, or

methods of storage, or shall provide for the prevention of the entry into any pest-free zone of any plants, plant products, things, or substances found to be dangerous to the agricultural and horticultural interests of such pest-free zone, or shall provide for the maintenance of a host-free period in which certain fruits are not to be allowed to be ripened, or shall provide for any specific treatment of a grove or orchard, any person or persons found guilty of selling, carrying, or transporting such plants or plant products from a quarantined area or areas declared infested or into an area declared to be a pest-free zone, as the case may be, or who shall maintain any ripening fruit during the host-free period on any tree declared to be a nuisance in such quarantine order, or fails or refuses to administer the treatment provided for, including specific methods of spraying, removing diseased parts, removing and destroying fallen or culled fruits, or removing such weeds or plants as may be hosts or carriers of insect pests or plant diseases, or failing to store products in manner as may be required, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not to exceed One Hundred Dollars (\$100), and each thing sold or transported, and each act in violation hereof, shall be considered a separate offense; and provided further that any person violating any of the provisions of this Act may be prosecuted therefor in any county of this State where such violation occurs." (Underscoring ours)

Webster's International Dictionary, 2nd Edition, designates a sweet potato as a plant. It is our opinion that a sweet potato may be either a plant or plant product depending as to when or how used. When the potato is on the vine it is a plant; when severed from the vine it is then a plant product.

We are further of the opinion that an indictment charging violation of this statute should contain two counts: one, charging sweet potato to be a plant and the other that it is a plant product.

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We are, therefore, of the opinion that the provisions of V.A.P.C., Article 1700-a-1 does apply to sweet potatoes infected with weevils.

We believe that the enclosed copies of our Opinions Nos. 0-5914 and 0-5793 will be of help to you.

Yours very truly

ATTORNEY GENERAL OF TEXAS

*David Wuntch*

By

David Wuntch  
Assistant

DW:mp  
Encl.

APPROVED MAY 10, 1945  
*Charles F. Ashley*  
ATTORNEY GENERAL

